

## 48A C.J.S. Judges § 27

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D.; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### II. Selection, Eligibility, and Qualification

#### A. Selection

#### 2. Manner or Method of Selection

##### a. In General

## § 27. Inferior judges

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  3

**Generally, the legislature may determine the manner or method of selecting judges of inferior courts.**

Although the power to select and the method of selecting inferior court judges is sometimes determined by constitutional provision,<sup>1</sup> more commonly it is left to the legislature for determination.<sup>2</sup> Accordingly, the legislature may provide for the election of inferior judges by the people.<sup>3</sup> It may also provide for the selection<sup>4</sup> or nomination<sup>5</sup> of inferior judges by superior judges or for the selection of inferior judges by local officials.<sup>6</sup> Where a municipality, such as a city, is given the right to appoint a municipal court judge, it may not, however, delegate such right to another municipality, such as the county.<sup>7</sup>

The legislature may also properly authorize local officials to determine the manner of selection of an inferior judge.<sup>8</sup> Where the legislature has authorized local officials, by charter, to determine the method of selection of inferior judges, provisions of the general law applicable to selection of inferior judges generally will not apply<sup>9</sup> although charter provisions sometimes will yield to provisions of the general law.<sup>10</sup> Where the legislature confers the authority to appoint an inferior judge on a commission or other appointing power without prescribing the method of procedure, the commission or other appointing power is free to adopt its own method.<sup>11</sup> In the absence of fraud or a violation of public policy, such an appointment is not reviewable by the courts.<sup>12</sup>

The legislature must act in accordance with the provisions of the constitution.<sup>13</sup> Where the constitution requires that all judges be elected by the electors of the judicial district, the legislature cannot provide that police justices or other inferior judges be appointed by local officials<sup>14</sup> although such is not applicable to a court which is not a constitutional court.<sup>15</sup>

***Selection of police judge.***

In the absence of any express provision as to the manner of selecting a police judge, the manner is governed by the laws relating to the selection of municipal officers generally<sup>16</sup> and not by provisions pertaining to the election of state officers.<sup>17</sup>

Westlaw. © 2023 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

**Footnotes**

- 1 Mich.—*Schwartz v. Secretary of State*, 393 Mich. 42, 222 N.W.2d 517 (1974).
- 2 Ind.—*Matter of Public Law No. 305 and Public Law No. 309 of Indiana Acts of 1975*, 263 Ind. 506, 334 N.E.2d 659 (1975).
- 3 Mich.—*Schwartz v. Secretary of State*, 393 Mich. 42, 222 N.W.2d 517 (1974).  
**Judges of municipal corporation courts not required to be elected by the people**  
Tenn.—*City of Knoxville ex rel. Roach v. Dossett*, 672 S.W.2d 193 (Tenn. 1984).
- 4 Ind.—*Petition for Appointment of Magistrates for City of Beech Grove*, 216 Ind. 417, 24 N.E.2d 773 (1940).
- 5 Ga.—*Roan v. Rogers*, 201 Ga. 696, 40 S.E.2d 551 (1946).
- 6 Colo.—*People, by and on Behalf of People of City of Thornton v. Horan*, 192 Colo. 144, 556 P.2d 1217 (1976).  
**Appointment by county judge**  
Appointment of county municipal court judges by a county judge is a valid exercise of legislative authority.  
Ark.—*Pulaski County Municipal Court v. Scott*, 272 Ark. 115, 612 S.W.2d 297 (1981).  
**Appointment by grand jury**  
Ga.—*Burpee v. Logan*, 216 Ga. 434, 117 S.E.2d 339 (1960).  
**Selection subject to electoral approval**  
Fla.—*Hall v. Strickland*, 170 So. 2d 827 (Fla. 1964).
- 7 Wash.—*Nollette v. Christianson*, 115 Wash. 2d 594, 800 P.2d 359 (1990).
- 8 N.J.—*Krieger v. Jersey City*, 27 N.J. 535, 143 A.2d 564 (1958).  
**No denial of equal protection**  
Colo.—*Francis v. County Court In and For City and County of Denver*, 175 Colo. 308, 487 P.2d 375 (1971).
- 9 Fla.—*State ex rel. Bodner v. Carbonelli*, 80 So. 2d 913 (Fla. 1955).
- 10 Tex.—*Holcombe v. Levy*, 301 S.W.2d 507 (Tex. Civ. App. Galveston 1957), writ refused n.r.e., (June 26, 1957).
- 11 Ala.—*Persons v. Summers*, 274 Ala. 673, 151 So. 2d 210 (1963).  
**Appointment by lame duck majority of township committee**

N.J.—*Higgins v. Denver*, 85 N.J. Super. 277, 204 A.2d 597 (App. Div. 1964).

12 Ala.—*Persons v. Summers*, 274 Ala. 673, 151 So. 2d 210 (1963).

13 Mich.—*Wells v. Kent County Bd. of Election Com'rs*, 382 Mich. 112, 168 N.W.2d 222 (1969).

14 Tenn.—*State ex rel. Haywood v. Superintendent, Davidson County Workhouse*, 195 Tenn. 265, 259 S.W.2d 159 (1953) (overruled on other grounds by, *Bankston v. State*, 908 S.W.2d 194 (Tenn. 1995)).

**Election by commissioners proper**

N.C.—*Meador v. Thomas*, 205 N.C. 142, 170 S.E. 110 (1933).

15 Tenn.—*State ex rel. Johnson v. Davis*, 204 Tenn. 510, 322 S.W.2d 214 (1959).

16 N.J.—*Perry v. Bianchi*, 96 N.J.L. 113, 114 A. 452 (N.J. Sup. Ct. 1921).

17 Mich.—*Ball v. Thomas*, 1 Mich. App. 1, 133 N.W.2d 218 (1965).

As to a judge as a state officer, see § 16.

---

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.